

**Application by Oliver James Colgrave for a special licence for the premises  
Norwood Café & Takeaway at 196 Penquite Road NORWOOD 7250.**

**Decision: Licence refused**

**Date: 15 November 2018**

### **The application**

The applicant has applied for a special licence (restaurant) authorising the sale of liquor for consumption on the premises Norwood Café & Takeaway, at 196 Penquite Road Norwood, to persons having a meal; and for consumption off the premises to patrons seated within the dining area authorised by an Occupational Licence issued by the Launceston City Council relating to the premises.

The premises that is the subject of the application is described by the applicant as a small business that is a great meeting place for locals and others who use it to their advantage when travelling to the area to visit residents of the nearby aged-care facilities. The premises is located on a busy main road in close proximity to public transport.

The applicant states that there are fewer than 20 seats available for customers; that liquor will only be served during lunch and dinner periods; that there will not be a bar facility; and that he is unlikely to promote liquor sales.

The applicant submits that granting a liquor licence for the premises will be in the best interests of the community as it will support local businesses and the economy. The applicant plans to offer Tasmanian craft beers, ciders, wines and spirits and asserts that, although the business is small, it would have a positive impact on small local distilleries and breweries.

It is the applicant's submission that allowing liquor to accompany meals will create growth in his business and that the additional revenue may allow him to offer more permanent employment opportunities in the future.

Finally, the applicant submits that granting a liquor licence for the premises will benefit the local community as it will complement the food menu in what is already a positive environment for customers. He does not anticipate that it will have a negative impact on any nearby groups, which include a church, aged-care facilities and the Queechy High School. The applicant states that he intends to have strict procedures in place to guard against the sale and supply of liquor to minors.

### **Representations**

In accordance with section 23(3) of the *Liquor Licensing Act 1990* (the Act), the applicant made a public notice of the application on 1 September 2018. I did not receive any representations from other parties in relation to the application.

### **Considerations**

The primary matters to be considered for a licence application of this type (special licence - restaurant) are to be found in sections 22 and 24A of the Act.

#### **Section 22**

Section 22 of the Act sets out the criteria that a person must meet in order to be qualified to be granted a liquor licence. I am satisfied that the applicant is qualified in accordance with section 22.

## **Section 24A**

Section 24A of the Act states at (1) that:

“In considering an application for a liquor licence, the Commissioner or the Commission must make a decision which, in the opinion of the Commissioner or the Commission, is in the best interests of the community.”

The term “best interests of the community” has been defined in the Act and the interests prescribed in regulations (*Liquor Licensing Regulations 2016*).

Regulation 4 provides:

### **4. Best interests of the community**

For the purposes of the definition of *best interests of the community* in section 3 of the Act, the following interests are prescribed:

- (a) the general costs and benefits to the community of the supply, or proposed supply, of liquor;
- (b) whether the supply or proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who, in the area of the supply or proposed supply –
  - (i) reside or work; or
  - (ii) attend schools or other facilities frequented by children; or
  - (iii) attend hospitals or facilities where people receive treatment for alcohol dependence or other addictions; or
  - (iv) attend places of worship;
- (c) possible adverse effects on the health and safety of members of the public due to the supply of, or proposed supply of, liquor.

I am satisfied on the evidence provided that the relevant consideration is that of the balance between the general costs and benefits to the community of the proposed supply of liquor. The context for this consideration is provided by the Object of the Act which is defined at section 2A in the following terms:

- 1) The object of this Act is to regulate the sale, supply, promotion and consumption of liquor so as to –
  - (a) minimise harm arising from the misuse of liquor by –
    - (i) ensuring that the supply of liquor is carried out in a way that is in the best interests of the community and does not, as far as practicable, detract from public amenity; and
    - (ii) restricting undesirable liquor promotion and advertising and the supply of certain liquor products; and
    - (iii) encouraging a culture of responsible consumption of liquor; and
  - (b) facilitate the responsible development of the liquor and hospitality industries in a way that is consistent with the best interests of the community.

It is a matter for the applicant to make the case that their application meets the requirements of the Act and regulations.

I have considered the application and have determined to refuse to grant the liquor licence applied for.

In making this determination I have taken into account:

- The application for a special licence (restaurant) dated 31 July 2018.
- The submission made by the applicant in support of his application.

- The inspection of the premises that I undertook on 4 October 2018, and the information provided to me by the applicant while I undertook the inspection.

The premises has the look and feel of a traditional takeaway store rather than a restaurant. It has a front counter, bain-marie displaying heated food, fridges displaying cold/frozen food, beverages and confectionary, with confectionary and other products on display near the front counter and on shelving. Cigarettes are also sold.

The menu comprises the types of foods that are generally available at takeaway stores throughout Tasmania (including burgers, fish and chips, fried chicken, Chiko Rolls, dim sims and sandwiches). Tables and chairs together with sauce and serviettes are available for customers who choose to eat their food on the premises, with plates provided on request.

Parking for a small number of vehicles is available on the main road directly outside, however the parking is limited to 15 minutes, a time limit more applicable for takeaway customers than for restaurant-style dining. Opening hours are from 7am to 8pm seven days a week.

The applicant estimates that 70 per cent of the food sales are takeaway, with around 30 per cent of the food sold consumed on the premises.

The Act defines a *restaurant* as a premises in which the principal activity is serving food for consumption on the premises. With respect to Norwood Café & Takeaway, it is clear that the principal activity is the sale of food, confectionary, soft drinks and so on, to local and transient customers for consumption off the premises and that in-house dining is ancillary to that activity. I considered similar matters in my decision regarding Bes Mudi (2016), where I determined to refuse the licence and noted:

“This is a small premises with limited parking, a take-away focus and limited scope for in-house dining. In-house dining appears to be a minor adjunct to selling of take-away food and packaged meals...”

The Act requires that to grant any licence I must be of the opinion that it will serve the best interests of the community to do so. The submission provided by the applicant in support of his application is not compelling in this regard. He did not provide sufficient evidence to convince me that the sale of Tasmanian liquor products from the premises would provide noteworthy flow-on benefits to local producers or the economy. Nor am I convinced that selling liquor will enhance his capacity as an employer, as this was only considered a possibility in the future and there was no evidence to suggest the outcome was likely. Further, the submission did not provide evidence that the community desires that the premises be licensed to sell liquor.

The community's best interests are not met by all takeaway stores being licensed to sell liquor. This was recognised by the Licensing Board (which had previous responsibility for determining licences) in its decision regarding the Port Sorell Snack Bar (2011). It found that:

"...it is not the intention of the legislation or this Board that every corner shop or retail venture be also licensed to sell liquor."

The Board also found that:

"... the mixed business/corner shop plus minor addition of seating space for consuming food does not of itself justify the grant of a liquor licence. In the best interests of the community the provision of liquor in the restaurant type of designation dictates that

the premises offer something more, either exclusively...or more closely resembling a restaurant in 'look and feel'..."

The Norwood premises does not have the look and feel of a restaurant and the applicant has not demonstrated that it is distinguished in any way from other unlicensed takeaway stores throughout the State, for example, it is not located in a tourist area nor is it a specialty store and therefore cannot offer any benefits in these terms.

### **Summary**

I find that the business related to the application is a typical takeaway with tables and chairs for the convenience of customers who wish to consume their food on the premises. The provision of tables and chairs for such a purpose is not unusual for a takeaway business and the premises is not distinct from other takeaway stores in Tasmania. I have not been provided with evidence sufficient to demonstrate that the best interest of the community would be served by granting the licence and as this is the case, I am bound by section 24A(1) of the Act not to grant the licence.

A handwritten signature in black ink, appearing to read 'J C Root', with a horizontal line extending to the right.

J C Root  
Commissioner for Licensing

15 November 2018